

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4322 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HINDUSTAN BROWN BOVERI LTD

Versus

ASHOK CHAVLA

Appearance:

MR GM JOSHI for Petitioner

MS PS PARMAR for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V. JUDGEMENT

1. The petitioner by this Special Civil Application challenges the order dated 31st January, 1983, annexure 'H' of the respondent No.1 and annexure 'I' dated 19th March, 1983 under which the petitioner was directed to pay the conversion tax of the land in dispute.
2. The facts of the case, in brief, are that the petitioner is a company registered under the Companies

Act, 1956, having its registered office at Brown Boveri House, 264/265 Dr. Annie Besant Road, Bombay-400 025, having its Head Office at Post Box No.284, Baroda-390 001 and Works at Maneja, Baroda-390 013. The petitioner owns the land bearing Survey Nos. 182, 167, 181, 185, 208, 219, 221 and 234 admeasuring in all about 120 acres and 11 gunthas situated in the sim of Village Maneja, Tal. Baroda.

3. The aforesaid lands were converted into non-agricultural use i.e. for industrial purposes and the petitioner company has been paying non-agricultural assessment thereon as per the order of the respondent No.1 made in the year 1964. Under the order dated 2nd August, 1972 of the District Development Officer, Baroda, the petitioner company was directed to pay special cess on the said land and that also the petitioner has paid. The respondent No.1 had passed an order dated 7th January, 1979 levying special cess in accordance with rules 81(1) and 81(2) of the Land Revenue Rules which came into force w.e.f. 1st August, 1976. As per the condition No.3 of the aforesaid order, it is provided that as per the orders granting permission for non-agricultural use of the lands, the lands cannot be used for any other purpose except for industrial purposes, and in contravention of the said permissions, the petitioner company would be liable to pay special cess in addition to other taxes and also will be liable to pay penalty for the breach thereof. It has further been provided in the said order except for industrial purpose the land cannot be used for any other purpose without the prior approval of the respondent No.1. The petitioner wanted to use the said non-agricultural land for industrial purposes by constructing Turbo Charger Shed and Auxiliary unit including plant section and pump-room for extension of its factory, the petitioner got the plans approved from the Baroda Municipal Corporation. The Baroda Municipal Corporation approved the plans and the competent authority granted no objection certificate under sec.20 of the Urban Land (Ceiling and Regulation) Act, 1976. The Commissioner of Industries has also sanctioned the said plans. The petitioner submitted an application to the Collector, Baroda on 12th November, 1981 with the original order dated 7th January, 1979, granting permission for non-agricultural use of the lands, a copy of Village Form No.7-12 of Survey No.182, a copy of the no objection certificate granted to the petitioner under sec.20 of the Urban Land (Ceiling & Regulation) Act, 1976, and also a copy of permission granted by the Municipal Corporation of the City of Baroda approving the plans of the Turbo

Charger Shed and Auxiliary Unit informing that that as per the plans approved, it is going to start the construction work in the said non-agricultural land. On receipt of the said application, the respondent No.1 asked the petitioner to pay Rs.36,410/- as land conversion tax on 18205 sq. mts. of land on or before 7th February, 1982 and to produce the challan for the deposit of the said amount, failing which it would be presumed that the petitioner is not interested in getting the non-agricultural use permission and the application would be filed. The petitioner sent a reply to the said order of the Collector and objected to levy of the conversion tax on the ground that the land is already non-agricultural land to be used for industrial purposes and the land is being used for industrial purposes and for that purpose, the company is paying the special cess. It has further been stated that there is no change in the object or user of the land and therefore, the company is not liable to pay the conversion tax as demanded. In the reply, the petitioner has very specially pointed out that the land of survey No.182 is non-agricultural land from the very beginning i.e. since the year 1964 and the District Development Officer, Baroda has revised the special cess as per the order aforesaid. The petitioner's further case was that as this land is already a non-agricultural land, no further permission is required and no permission has been sought for conversion of the same for non-agricultural use. It is only a case where the petitioner wanted to make further construction on the non-agricultural land. However, the respondent No.1 under its order dated 13th February, 1982 rejected the objections of the petitioner and reiterated its demand for the payment of conversion tax. The petitioner filed review application before the respondent No.1 for review of the said order. In review application, many contentions have been taken, but one of the contentions was that the petitioner company has not requested for non-agricultural use permission, but had only requested permission for additional construction on the land for which non-agricultural assessment has already been fixed and the company is paying the same. Reference has also been made by the petitioner that on earlier occasions, the respondent No.1 has granted similar permission vide its orders dated 22nd March, 1979, 19th April, 1979, 28th May, 1979 and 28th September, 1979. The respondent No.1 under its communication dated 10th May, 1982, informed the petitioner that since the application of the petitioner company for permission to use the land for non-agricultural purposes has been rejected, the review application of the petitioner is filed.

4. The petitioner company being felt aggrieved of the aforesaid orders of the respondent No.1 preferred a revision application before the respondent No.2. The said revision application came to be allowed vide order dated 20th September, 1982 and the matter has been remanded back to the respondent No.1. After remand, notice has been issued by the respondent No.1, Collector to the petitioner for hearing of the case on 24th November, 1982 at 12-00 Noon in his Chamber at Baroda. In hearing, on behalf of the petitioner a submission has been made that the land was already non-agricultural land for which the permission has been granted prior to 1976. It is not a case where the land has to be used for non-agricultural purpose other than for which the permission is granted. Sec. 67-A of the Bombay Land Revenue Code has come into force from 1976, and therefore, the provisions of the said section are not attracted in the present case, and the demand of the conversion tax is wholly unjustified. The scope of applicability of sec.67-A of the Act aforesaid is not here in the present case. However, the respondent No.1 rejected the application of the petitioner under the order dated 31st January, 1983.

5. The petitioner preferred a revision application under sec.211 of the Bombay Land Revenue Code before the State Government. The petitioner prayed for the stay of the order of the Collector, and the respondent No.2 was pleased to stay the same vide its order dated 22nd February, 1983 on condition that 50% of the amount of the conversion tax is deposited by the petitioner, which amount has been deposited by the petitioner on 2nd March, 1983. However, ultimately, the said revision application came to be dismissed by the respondent No.2 vide its order dated 19th March, 1983. Hence, this Special Civil Application.

6. The learned counsel for the petitioner, Shri G.M. Joshi, contended that the amount of conversion tax demanded by the respondent No.1 from the petitioner is wholly arbitrary and unjustified. The provisions of sec.67-A of the Land Revenue Code are not applicable in the case of the petitioner, as the land in dispute was already converted for non-agricultural purposes much before this section has come into force. It has next been contended by the learned counsel for the petitioner, Shri G.M. Joshi, that both the authorities have not approached in the matter in correct perspective. Sec.67-A of the Land Revenue Code could have been attracted only where the holder of the land which has already been converted for non-agricultural purposes, for

a particular purpose, and if he changes that purpose, and not otherwise. In the case in hand, the learned counsel for the petitioner, Shri G.M. Joshi, contended that the land in dispute was converted in the year 1964 for non-agricultural purposes i.e. for industrial purposes and the land has also been assessed as a non-agricultural land. The petitioner is not praying for any change of the non-agricultural purposes for which the permission has been granted earlier. The petitioner will use the land for industrial purposes. Lastly, the counsel for the petitioner, Shri G.M. Joshi, contended that earlier also the Collector, the respondent No.1, has granted the permissions for construction on the land of industrial sheds etc. after sec.67-A of the Land Revenue Code has come into force, but the conversion tax was not demanded.

7. On the other hand, the counsel for the respondents supported the impugned orders.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

9. The whole approach of both the authorities below is that as the land being converted in non-agricultural land after 1-8-1976, the conversion tax can be taken as per law. Further it comes out from the orders of the authorities below that both of them proceeded that if the construction has been made before 1-8-1976 then the conversion tax cannot be taken, but if the construction is made after 1-8-1976 then the conversion tax can be taken. Both the authorities have accepted as a fact that the N.A. permission has been given to the petitioner company much before 1-8-1976. It is not in dispute that this permission was granted in the year 1964. The learned counsel for the petitioner submitted that almost whole of the land of S. No.182 is covered by industries and it is only a case where there is an addition of industries on the land and for that purpose a construction has to be made. The learned counsel for the respondents does not dispute that the constructed portion of the land of S. No.182 has already been put to use for industrial purposes and it is only a case where further industries have to be put on, on other part of the land.

10. Sec.67-A of the Code, 1879, has come into force w.e.f. 1-8-1976 and it is not in dispute that the petitioner has taken the permission for raising further construction on the land from the Corporation after this date. So the construction on the part of the land of S. No.182 is proposed to be raised after 1-8-1976 on which point there is no dispute between the parties.

11. The reply to the Sp. C.A. has been filed and the averments made by the petitioner in Para No.6 of the Sp. C.A. have not been denied. So the facts stated by the petitioner that the Collector has permitted the raising of construction by the petitioner after 1-8-1976 under its orders dated 22nd March, 1979, 19th April, 1979, 28th May, 1979 and 28th September, 1979, have not been denied. The respondent No.1 has earlier granted the permissions for raising of the constructions on this converted non-agricultural land for industrial purposes after 1-8-1976, but at that time, the conversion tax was not demanded from the petitioner. Sec.67-A of the Code, 1879, has come into force and the construction was sought to be raised after the said date, but still the respondent No.1 has not considered it to be a case where the conversion tax should be levied. This aspect of the matter has not been considered by the respondents. Otherwise also, from reading of sec.67-A of the Code, 1879, it appears that it has not been appreciated in correct perspective by the authorities below. Sub-section (1) of sec.67-A of the Code, 1879, is not relevant, but what is relevant is sub-section (2) of the said section.

12. Sub-section (2) of sec.67-A of the Code, 1879, provides for levy of conversion tax in a case where any land assessed or held for any non-agricultural purposes (hereinafter in this section referred to as the existing non-agricultural purpose) and situated in a specified area is permitted or deemed to have been permitted under sec.65-A to be used for any other non-agricultural purpose or is used for any other non-agricultural purpose without the permission of Collector being first obtained or before the expiry of three months from the date of application for such permission, the occupant of such land shall be liable to pay to the State Government, a tax at such rate as may be prescribed.

13. Sec.65-A provides that where the occupant of any land assessed or held for any non-agricultural purposes wishes to use such land or part thereof for any other non-agricultural purpose, the Collector's permission shall in first place be applied for by him and the provisions of sec.65 shall, so far as may be, apply to such application. The explanation of sec.65-A is material, which provides that in this section and sec.67-A "non-agricultural purpose" means any of the purposes specified in clauses (b) to (e) of sub-section (1) of section 48.

14. Sec. 48 of the Code, 1879, provides that the land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land -

- (a) for the purpose of agriculture ;
- (b) for the purpose of residence ;
- (c) for the purpose of industry ;
- (d) for the purpose of Commerce, or
- (e) for any other purpose.

15. Sub-section (2) of section 48 provides that where the land assessed for use of any purpose is permitted or deemed to have been permitted under section 65, or, as the case may be, under section 65A, to be used for any other purpose, or is used for any other purpose without the permission of the Collector being first obtained or before the expiry of the period prescribed by section 65, or, as the case may be, by section 65A, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate with effect from the commencement of the revenue year in which the land is so permitted or deemed to have been permitted to be use or, as the case may be, is used without the permission of the Collector by such authority and subject to such rules as the State Government may prescribe in this behalf.

16. Mere reading of sec.48(1) of the Code, 1879, gives out that the land revenue leviable on any land under the provisions of this Act shall be assessed or shall be deemed to have been assessed, as the case may be, with reference to the used of the land i.e. for the purpose of agriculture or for non-agricultural purposes i.e. residence, industry, commerce or any other purpose.

17. The underlying object of sub-section (2) of sec.67-A of the Code, 1879, is that where the land assessed or held for any non-agricultural purpose is used for any other non-agricultural purpose i.e. other than for which it has been converted then only the question to levy conversion tax arises and not otherwise. To understand this, I may given an illustration. There are four non-agricultural purposes enumerated in sub-clauses (b) to (e) of sub-section (1) of section 48. So if the land is assessed or held by the holder thereof say for the purpose of residence and if he uses the same for non-agricultural purpose, say for industry, then only the

provisions of sec.67-A would have been attracted and not otherwise. The underlying scheme of the provisions of sections 48, 65, 65A and 67A of the Code, 1879, is that once the land has been converted for any non-agricultural purpose, it has to be assessed or retained for the same purposes and it cannot be used for any other non-agricultural purposes (context of sec.48 of the Act), and if it is so desired after 1-8-1976 then certainly the question of levy of conversion tax would have been there.

18. It is not in dispute that the land in dispute on which the petitioner now sought to raise the construction has already been converted for non-agricultural purpose i.e. for the purpose of industry and he wants to use this land only for the purpose of industry. The conversion of the land for industrial purposes means that the holder thereof will use it only for industrial purposes i.e. to install the industry thereon and for installation of industry thereon, the construction of shed and other buildings has to be made. So the construction of shed etc. is not relevant and significant, but significant is the purpose for which the agricultural land has been converted into non-agricultural and purpose of construction. The whole approach of both the authorities below is contrary to the underlying scheme of sec.67A of the Code, 1879, and as such, the impugned orders cannot be allowed to stand. The raising of the construction before or after 1-8-1976 for the purpose of industry cannot be tantamount to change of use of the land for any other non-agricultural purpose than for which the land has been converted.

19. In the result, this Special Civil Application succeeds and the same is allowed. The impugned orders of the respondent No.1 dated 31st January, 1983 and that of the respondent No.2 dated 19th March, 1983, annexure 'H' and 'I' to this petition are quashed and set aside. The petitioner has deposited 50% amount of the demand of conversion tax in Government in pursuance of the order of the revisional authority. It is hereby ordered that the amount deposited by the petitioner of 50% tax in pursuance of the order of the respondent No.2 should be refunded back to the petitioner forthwith on production of certified copy of this order. Rule is made absolute with no order as to costs.

zgs/-